# Lee Chiew Fah @ Li Chiew Fah v Wong Tien Fatt @ Wong Nyuk Foh

HIGH COURT (SANDAKAN) — ELECTION PETITION NO SDK-26 EP-2/6 OF 2013
STEPHEN CHUNG JC
27 AUGUST 2013

*Election — Petition — Defective petition — Parties were candidates in same election and constituency — Respondent advertised banners referring to election for purpose of intimidating, soliciting and/or dissuading voters in constituency — Giving out of party's signage at polling center — Whether offence under s 11(1)(c) of the Election Offences Act 1954 — Whether election of respondent void — Preliminary objections — Whether election petition defective and ought to be struck out — Election Offences Act 1954 ss 32(a), (b) & (c)*

The petitioner pleaded that he was a person who voted and or had the right to vote at the election in the Parliamentary Constituency of P186 Sandakan. The petitioner argued that Liew Vui Keong representing Barisan National ('BN') and the respondent, who were representing the Democratic Action Party ('DAP') were candidates in the same election and constituency. It was the petitioner's averment that the respondent and orhis agents, made, printed, published, distributed or postedup or caused to be made, printed, published, distributed or posted up, in four locations, campaign materials advertised in the form of banners, which referred to the election, for the purpose of intimidating, soliciting and or persuading voters in the constituency to vote for the respondent and to refrain from voting for the BN's candidate. The advertisement banners did not bear the names and addresses of the printers and publishers. It was argued that the respondent had committed an offence under s 11(1)(c) of the Election Offences Act 1954 ('EOA'). The petitioner further complained that the action of the respondent and/or his agents, during polling day had solicited or persuaded or attempted to persuade the voters at the polling center at SMJK Tiong Hua, Sandakan by giving signage of Rocket which was a DAP's logo. The petitioner submitted that this was in breach of s 26(1)(e)(iii) of the EOA. In his election petition, the petitioner prayed, inter alia, that the election of the respondent be declared void under s 32(a), (b) and/or (c) of the EOA; and further or in the alternative, that the BN's candidate Liew Vui Keong be declared as being duly elected or returned. The respondent raiseda series of preliminary objections that the election petition was defective and be struck out.

**Held**, striking out the election petition with costs of RM30,000:

(1) Section 34 of the EOA stated that an election petition might be presented

to the High Court by some person who voted or had a right to vote at the election to which the petition pertained; some person claiming to have had a right to be returned or elected at such election; or some person alleging himself to have been a candidate at such election. The petitioner had voted in the election in P186 and therefore, he was such a person who voted at the election to which the petition related. He was eligible and had the standing to present the election petition which he had done so. There were no merits on the preliminary objections (see paras 15–16).

(2) By relying on non-compliance with the provisions of any written law relating to the conduct of any election to avoid the election of the respondent, the petitioner must plead the requisite provision of the laws ie s 32(b), that there were non-compliance with the laws to sustain his prayers. The petitioner did not specifically plead s 32(b) in his petition. He only referred to s 32(b) in the prayers in the petition. In election cases, strict compliance of the election legislations and regulations was required, otherwise any election petition would be rendered defective and liable to be struck out in limine. Under r 4(1)(b) of the Rules, it was mandatory that an election petition shall state briefly the facts and grounds relied upon to sustain the prayers sought for (see paras 18–19).

(3) The petitioner did not plead nor rely on s 31(1) of the EOA that the election of the respondent at the election was avoided by his conviction for any corrupt practice or illegal practice at such election. He also did not plead that such non-compliance affected the result of the election. Instead, based on the facts pleaded, the petitioner relied on ss 32(b) and (c) of the EOA (see para 25).

(4) The petitioner did not identify who were the agents of the respondent who had committed the illegal practices with the knowledge and consent of the respondent at SMJK TiongHua Sandakan. The petitioner also failed to identify who were the voters who were solicited or persuaded by the respondent or his agents with his knowledge or consent contrary to s 26(1)(e)(iii) of the EOA to vote for the respondent. Although only one ('Chen Kok On') was identified, the petitioner did not identify the others who were loitering and whether they were the agents of the respondent and whether they committed the illegal practice with the knowledge and consent of the respondent. Even so, the petitioner did not specifically plead that Chen Kok On had committed the illegal practice with the knowledge or consent of the respondent (see paras 28–29).

**[Bahasa Malaysia summary**

Pempetisyen telah merayu bahawa dia adalah pengundi dan atau mempunyai hak untuk mengundi di pilihan raya di Kawasan Parlimen P186 Sandakan. Pempetisyen berhujah bahawa Liew Vui Keong yang mewakili Barisan Nasional ('BN') dan responden, yang mewakili Parti Tindakan Demokratik

('DAP') adalah calon-calon dalam pilihan raya dan kawasan sama. Adalah hujah pempetisyen bahawa responden dan atau ejen-ejennya, telah membuat, mencetak, menerbitkan, mengedar atau menaikkan atau menyebabkan dibuat, dicetak, diterbitkan, diedarkan atau dinaikkan, di empat lokasi, bahan-bahan kempen yang diiklankan dalam bentuk kain sepanduk, yang merujuk kepada pilihan raya itu, bagi tujuan menggesa, memujuk dan atau mempengaruhi pengundi-pengundi dalam kawasan untuk mengundi responden dan untuk menghalang daripada mengundi calon-calon BN. Iklan-iklan kain sepanduk tersebut tidak menyatakan nama-nama atau alamat-alamat pencetak dan penerbit. Adalah dihujahkan bahawa responden telah melakukan kesalahan di bawah s 11(1)(c) Akta Kesalahan Pilihanraya 1954 ('AKP'). Pempetisyen selanjutnya mengadu bahawa tindakan responden dan/atau ejen-ejennya, semasa hari undian telah memujuk atau mempengaruhi atau cuba untuk mempengaruhi pengundi-pengundi di pusat undian di SMJK Ting Hua, Sandakan dengan mempamerkan papan tanda roket yang merupakan logo DAP. Pempetisyen berhujah bahawa ini melanggar s 26(1)(e)(iii) AKP. Dalam petisyen pilihan raya, pempetisyen memohon, antara lain, agar pemilihan responden diisytiharkan terbatal di bawah s 32(a), (b) dan/atau (c) AKP; dan selanjutnya atau secara alternatif, agar calon BN Liew Vui Keong diisytiharkan telah dipilih atau dikembalikan. Responden telah menimbulkan beberapa siri bantahan awalan bahawa petisyen pilihan raya itu cacat dan patut dibatalkan.

**Diputuskan**, membatalkan petisyen pilihan raya dengan kos sebanyak RM30,000:

(1) Seksyen 34 AKP menyatakan bahawa petisyen pilihan raya boleh dikemukakan ke Mahkamah Tinggi oleh beberapa orang yang telah mengundi atau mempunyai hak untuk mengundi di pilihan raya yang mana petisyen itu dibuat; beberapa orang yang mendakwa mempunyai hak dikembalikan atau dipilih di pilihan raya tersebut; atau beberapa orang yang mendakwa dirinya sebagai calon di pilihan raya tersebut. Pempetisyen telah mengundi di pilihan raya di P186 dan oleh itu, dia adalah seorang yang telah mengundi di pilihan raya yang mana berkaitan dengan petisyen itu adalah berkaitan. Dia layak dan mempunyai kedudukan untuk mengemukakan petisyen pilihan raya yang telah pun dilakukannya. Tiada merit untuk bantahan awalan tersebut (lihat perenggan 15–16).

(2) Dengan bergantung kepada ketidakpatuhan peruntukan mana-mana undang-undang bertulis berkaitan mana-mana pilihan raya yang diadakan untuk mengelakkan pemilihan responden, pempetisyen perlu mempli peruntukan yang dikehendaki undang-undang iaitu s 32(b), bahawa terdapat ketidakpatuhan dengan undang-undang untuk mengekalkan permohonannya. Pempetisyen tidak secara khusus mempli s 32(b) dalam petisyennya. Dia hanya merujuk kepada s 32(b) dalam permohonan dalam petisyen itu. Dalam kes-kes pilihan raya, pematuhan

ketat terhadap perundangan dan pilihan raya adalah perlu, jika tidak, mana-mana petisyen pilihan raya akan menjadi cacat dan boleh dibatalkan *in limine*. Di bawah k 4(1)(b) Kaedah-Kaedah, ia adalah mandatori agar petisyen pilihan raya hendaklah menyatakan secara ringkas fakta dan alasan yang digunakan untuk mengekalkan permohonan yang dipohon (lihat perenggan 18–19).

(3) Pempetisyen tidak mempli atau bergantung kepada s 31(1) AKP bahawa pemilihan responden di pilihan raya itu dielakkan oleh sabitannya untuk apa-apa amalan korup atau amalan yang menyalahi undang-undang di pilihan raya tersebut. Dia juga tidak mempli bahawa ketidakpatuhan sebegitu menjejaskan keputusan pilihan raya itu. Sebaliknya, berdasarkan fakta yang dipli, pempetisyen bergantung kepada s 32(b) dan (c) AKP (lihat perenggan 25).

(4) Pempetisyen tidak mengenal pasti siapa ejen-ejen responden yang telah melakukan amalan menyalahi undang-undang dengan pengetahuan dan persetujuan responden di SMJK Tiong Hua Sandakan. Pempetisyen juga gagal mengenal pasti siapa pengundi-pengundi yang dipujuk atau dipengaruhi oleh responden atau ejen-ejennya dengan pengetahuan atau persetujuannya bertentangan dengan s 26(1)(e)(iii) AKP untuk mengundi responden. Walaupun hanya seorang ('Chen Kok On') telah dikenal pasti, pempetisyen tidak mengenal pasti mereka yang lain yang berdiri berdekatan dan sama ada mereka adalah ejen-ejen responden dan sama ada mereka telah melakukan amalan menyalahi undang-undang dengan pengetahuan dan persetujuan responden. Jikapun begitu, pempetisyen tidak mempli secara khusus bahawa Chen Kok On telah melakukan amalan menyalahi undang-undang dengan pengetahuan atau persetujuan responden (lihat perenggan 28–29).]

**Notes**

For cases on defective election, see 6 *Mallal's Digest* (4th Ed, 2012 Reissue) paras 2180–2187.

**Cases referred to**

*Dato' Ismail bin Kamus v Pegawai Pengurus Pilihan Raya, Zainal Abidin bin Azim & Ors* [2005] 3 MLJ 193; [2005] 2 CLJ 237, FC (refd)

*Dr Shafie bin Abu Bakar v Pegawai Pegurus Pilihan Raya N 26 Bangi — Mohd Zakri bin Hj Hussin & Ors and other petitions (No 2)* [2005] 2 MLJ 149, HC (refd)

*Gan Joon Zin v Fong Kui Lun & Ors* [2004] 4 CLJ 729, FC (refd)

*Mahari bin Endut v Dato' Hj Razali bin Kassim & Ors* [2009] 5 MLJ 153; [2009] 4 CLJ 488, FC (refd)

*Mohd Nazri bin Hj Din v Dato' Seri Raja Ahmad Zainuddin bin Raja Hj Omar & Ors* [2009] 3 MLJ 589; [2009] 3 CLJ 221, FC (refd)

**Legislation referred to**

Elections Act 1958 ss 8, 9(1), 9A
Election Offences Act 1954 ss 4A(1), 9A, 9(1), 11(1)(b), 11(1)(c), 26(1)(e)(iii), (iv), 32(a), (b), (c), 34, 34 (a), (b), (c), 35
Election Petition Rules 1954 r 4, 4(1)(b), (3), (4)
Federal Constitution art 119, 119(1), (1)(b), (3), (4)(b)

*Roland Cheng (Nelson W Angang and Nelson W Angang with him) (Aklee, Chua & Angang Advocates) for the petitioner.*
*Lim Chee Wee (Ansari and Chen Kok On with him) (MF Poon, Hiew & Assoc) for the respondent.*

**Stephen Chung JC:**

**[1]** The petitioner pleaded that he is a person who voted and or had the right to vote at the election in the Parliamentary Constituency of P 186 Sandakan on 5 May 2013. The petitioner states that Liew Vui Keong representing Barisan National ('BN') and the respondent Wong Tien Fatt @ Wong Nyuk Foh representing the Democratic Action Party ('DAP') were candidates in the election for the Parliamentary Constituency of P 186 Sandakan. The respondent was duly elected as the member of Parliament for the said constituency.

**[2]** The results of the Parliamentary Election for P 186 Sandakan held were as follows:

Constituency of P. 186 SANDAKAN

| | | |
|---|---|---|
| A- | Total number of electorate | 37,058 |
| B- | Total number of ballot papers issued at (as in A in all Form 14 + A in Form 15) | 27,923 |
| C- | Number of votes by electors for each Contesting candidate: | |

| Name of Candidate | Name of Political Party/ Independent | Number |
|---|---|---|
| 1. Liew Vui Keong | BN | 13,138 |
| 2. Wong Tien Fatt | DAP | 14,226 |
| | Total number of votes by electors | 26,364 |

| | | |
|---|---|---|
| D - | Total number of rejected ballot papers (as in C in all Form 14 + C in Form 15) | 525 |
| E - | Total number of ballot papers issued but not put in the ballot box (as in C in all Form 14) and not returned (as in D in Form 15) (B-C-D) | 34 |

| | | |
|---|---|---|
| F - | Percentage of voting (B/A x 100) | 75.3% |
| G - | Majority (the highest votes - second highest votes) | 1,088 |

**[3]** The petitioner complained that the respondent and or his agents, with his knowledge and or consent, in the election, made, printed, published, distributed or posted up or caused to be made, printed, published, distributed or posted up, in four locations specified in the petition in the constituency, campaign materials advertised in the form of banners in red coloured cloth in the Chinese language to members of the public, which referred to the election, for the purpose of intimidating, soliciting and or persuading voters in the constituency to vote for the respondent and to refrain from voting for the BN's candidate. The advertisement banners did not bear the names and addresses of the printers and publishers. The petitioner complained that by reason of the matters aforesaid, the respondent has committed an offence under s 11(1)(c) of the Election Offences Act 1954 (Act 5) ('EOA').

**[4]** Further and or in the alternative, the petitioner complained that the purpose, amongst others, of the advertisement banners that contained the false statements of facts was to intimidate, solicit and or persuade voters in the constituency to vote for the respondent and or to refrain or induce them from voting for the BN's candidate in breach of ss 9(1) and 11(1)(b) of the EOA.

**[5]** Further, the petitioner complained that the respondent, during the election, directly or indirectly, by himself or by any person on his behalf, had done and or made statements in the form of the advertisement banners with a view or with a tendency to promote feelings of ill-will, discontent or hostility between the people in the constituency in order to induce the voters to vote for the respondent or to refrain from voting the BN's candidate in the election and had committed an offence punishable under s 4A(1) of the EOA.

**[6]** The petitioner complained that the action of the respondent and or his agents, during polling day on 5 May 2013, had solicited or persuaded or attempted to persuade the voters at the Polling Center at SMJK Tiong Hua Sandakan at Batu 2, Jalan Utara, Sandakan in the said constituency to vote for the respondent at the election by giving signage of Rocket which is a DAP's logo which was in breach of s 26(1)(e)(iii) of the EOA.

**[7]** Further and or in the alternative, the petitioner complained that the action of the respondent and or his agents, during polling day on 5 May 2013, to wait or loitering at the Polling Center at SMJK Tiong Hua Sandakan at Batu 2, Jalan Utara, Sandakan was in breach of s 26(1)(e)(iii) and or (iv) of the EOA.

**[8]** The petitioner in the election petition prayed (a) that the election of the respondent Wong Tien Fatt @ Wong Nyuk Foh be declared void under s 32(a) and or 32(b) and or 32(c) of the EOA, (b) further or in the alternative, that the BN's candidate Liew Vui Keong be declared as being duly elected or returned, and (c) such further or other reliefs as may be just.

**[9]** The respondent Wong Tien Fatt @ Wong Nyuk Foh raised the following preliminary objections that the election petition was defective and be struck out:

(a) The petitioner has no locus standi to present the petition pursuant to s 34 of the EOA because the petitioner had no or no valid address stated in the Electoral Roll for the 13th General Election according to the 'Notis Penentuan' *gazetted* on 11 April 2013, as shown in the Electoral Roll for 186/46/04 Pasar, Wisma Warisan, Saluran 2, B:1569, for the Parliamentary Constituency of P186 Sandakan, and therefore was not entitled to vote in that constituency for that General Election pursuant to art 119(1)(b) of the Federal Constitution.

(b) Alternatively, the petitioner gave his address in the petition as being at Lot 1895, Block 39, Taman Rimba, Sandakan, Sabah, which made the petitioner a resident in the Parliamentary Constituency of Limbaran, and not Sandakan. Therefore the petitioner was not entitled to vote in the Parliamentary Constituency of P186 Sandakan for the 13th General Election pursuant to art 119(1)(b) of the Federal Constitution.

(c) The petitioner has failed to plead material particulars, inter alia, but not limited to, the requirement to plead the material facts to support the averments that the acts complained of in the petition have affected the result of the election. This amounted to a failure to comply with the mandatory requirements of r 4(1)(b) and 4(4), (3) of the Election Petition Rules 1954 ('Rules').

(d) The petitioner has failed to plead the material particulars required pursuant to s 32(a) of the EOA, inter alia, but not limited to any particulars of the voters who voted for the respondent instead of the petitioner as a result of the general intimidation. This amounted to a failure to comply with the mandatory requirements of rr 4(1)(b) and 4(4), (3) of the Rules.

(e) The petitioner has failed to plead with sufficient particularity the requisite ingredients to constitute a breach of s 9(1) of the EOA as averred to in para A(viii) of the petition to warrant the reliefs sought. This amounted to a failure to comply with the mandatory requirements of rr 4(1)(b) and 4(4), (3) of the Rules.

(f) The petitioner has failed to plead with sufficient particularity the requisite ingredients to constitute the alleged offence under s 4A(1) of the

EOA as averred to in paragraph A(b) of the petition, to warrant the reliefs sought. This amounted to a failure to comply with the mandatory requirements of r 4(1)(b) and 4(4), (3) of the Rules.

(g) The petitioner has failed to plead with sufficient particularity the material facts in respect of the alleged breach of s 26(1)(e)(iii) of the EOA as stated in paragraph A(xvii)(a) of the petition such as to entitle him to the reliefs sought to avoid the election. This amounted to a failure to comply with the mandatory requirements of r 4(1)(b) and 4(4), (3) of the Rules.

(h) The petitioner has failed to plead with sufficient particularity the material facts in respect of the alleged breach of s 26(1)(e)(iii) of the EOA such as to entitle him to the reliefs sought to avoid the election. This amounted to a failure to comply with the mandatory requirements of r 4(1)(b) and 4(4), (3) of the Rules.

(i) The petitioner by prayer C(b) of his petition seeks a relief that is not provided by law, to wit, s 35 of the EOA.

**[10]** The first issue is whether the petitioner has any locus standi to present this election petition pursuant to s 35 of the EOA. The respondent submitted that under s 34(a) of the EOA, an individual who has a right to vote under art 119(1) of the Constitution is described as a citizen who has attained the age of 21 years on the qualifying date; is resident in a constituency on such qualifying date or, if not so resident, is an absent voter; and is under the provisions of any law relating to elections, registered in the electoral roll as an elector in the constituency in which he resides on the qualifying date, is entitled to vote in that constituency in any election to the House of Representatives or the Legislative Assembly unless he is disqualified under cl (3) or under any law relating to offences committed in connection with elections.

**[11]** The respondent submitted that on the qualifying date as defined in art 119(4)(b) of the Constitution, the petitioner did not have any valid or proper address in the electoral roll or in the alternative that he has an address at Lot 1895, Block 39, Taman Rimba, Sandakan which is outside the constituency of P186. The respondent submitted that therefore the petitioner was not and is not eligible to vote in the election in P186 nor the standing to present this Petition.

**[12]** Pursuant to s 8 of the Elections Act 1958 ('EA'), the chief registrar, and subject to his direction, control and supervision, a deputy registrar or registrar, shall exercise over all matters relating to the registration of electors and the preparation, publication and revision of an electoral roll under the Act and or any regulations made under the Act. Section 9(1) of the EA provides that each registrar shall prepare, publish and revise in the prescribed manner the prescribed electoral roll for the registration area for which he is appointed.

**[13]** When the electoral roll was being prepared and to be published, the respondent did not question or challenge the accuracy or invalidity of the electoral roll in particular, that the petitioner did not have a valid or proper address in the electoral roll or that his given address was not within P186 or that he was not entitled to vote in P186. Under s 9A of the EA, after the electoral roll has been certified and the notice of the certification has been published in the *gazette* as prescribed by regulations under the Act, the electoral roll shall be deemed to be final and binding and shall not be questioned or appealed against in or reviewed quashed or set aside by any courts.

**[14]** The respondent did not complain that the petitioner was not or is not a registered elector in the electoral roll for P186. The respondent also did not complain that the petitioner did not vote in the election in P186. Once an elector has been registered as such in the electoral roll pursuant to art 119 of the Constitution, he is entitled to vote in the constituency.

**[15]** Section 34 of the EOA states that an election petition may be presented to the High Court by (a) some person who voted or had a right to vote at the election to which the petition relates; (b) some person claiming to have had a right to be returned or elected at such election; or (c) some person alleging himself to have been a candidate at such election.

**[16]** The petitioner had voted in the election in P186. He is such a person who voted at the election to which the petition relates. Therefore he is eligible and has the standing to present this election petition which he has done so. There are no merits on these preliminary objections.

**[17]** Next, as stated above, the petitioner complained that the respondent and/or his agents, with his knowledge and/or consent in the election made, printed, published, distributed the advertisement banners which did not bear the names and addresses of its printers and publishers contrary to s 11(1)(c) of the EOA and that the purpose of the advertisement banner was to intimidate the voters in PI86 to vote for the respondent or not to vote for the BN's candidate in breach of ss 9(1) and 11(1)(c) of the EOA. The petitioner also complained that the statements in the advertisement banners were with a tendency to promote feelings of ill-will, discontent or hostility between the people in P186 contrary to s 4A(1) of the EOA.

**[18]** It should be noted that the petitioner in his petition has relied on ss 4A(1), 9(1) and 11(1)(c) of the EOA and s 32(a) and s 32(c) to ground his Petition to avoid the election of respondent in P186. His complaints were that the respondents his servants and or his agents in conducting the election failed to comply with the provisions of any written law relating to the conduct of the election. By relying on non-compliance with the provisions of any written law

relating to the conduct of any election to avoid the election of the respondent, the Petition must plead the requisite provision of the laws ie s 32(b), that there were non-compliance with the laws to sustain his prayers. The petitioner did not specifically plead s 32(b) in his petition. He only referred to s 32(b) in the prayers in the petition.

**[19]** In election cases, strict compliance of the election legislations and regulations is required otherwise any election petition will be rendered defective and liable to be struck out in limine. Under r 4(1)(b) of the Rules it is mandatory that an election petition shall state briefly the facts and grounds relied upon to sustain the prayers sought for: *Mahari bin Endut v Dato' Hj Razali bin Kassim & Ors* [2009] 5 MLJ 153; [2009] 4 CLJ 488. The facts complained of narrated in a petition must relate or associate the complaints with the provision of election laws the respondents are alleged to have transgressed. There must be such a nexus pleaded: *Gan Joon Zin v Fong Kui Lun & Ors* [2004] 4 CLJ 729. The facts to be pleaded must be such as to make out a case for the petitioner: *Mohd Nazri bin Hj Din v Dato' Seri Raja Ahmad Zainuddin bin Raja Hj Omar & Ors* [2009] 3 MLJ 589; [2009] 3 CLJ 221.

**[20]** Section 32(b) states that the election of a candidate at any election shall be declared to be void on an election petition, which may be proved to the satisfaction of the election judge, on non-compliance with the provisions of any written law relating to the conduct of any election if it appears that the election was not conducted in accordance with the principles laid down in such written law and such non-compliance affected the result of the election.

**[21]** There are two limbs or parts in s 32(b) of the EOA ie non-compliance with the provisions of the law and that such non-compliance affected the result of the election: *Dato' Ismail bin Kamus v Pegawai Pengurus Pilihan Raya, Zainal Abidin bin Azim & Ors* [2005] 3 MLJ 193; [2005] 2 CLJ 237. The petitioner has pleaded that there were non-compliance with the relevant provisions of the election laws. However, the petitioner did not and failed to plead that such non-compliance affected the result of the election. By failing to do so, it did not comply with the mandatory requirements of s 32(b) of the EOA and it did not constitute the complete ground to sustain the prayer sought for.

**[22]** Further, there are also two limbs in s 32(a) of the EOA ie there is or are general bribery, general treating or general intimidation and that they have so extensively prevailed that they may be reasonably supposed to have affected the result of the election. Similarly, the petitioner has pleaded that there was general intimidation but did not and have failed to plead that they have so extensively prevailed that they may be reasonably supposed to have affected the result of the election.

**[23]** The facts and particulars to show how extensively the offence of intimidation pursuant to s 32(a) of the EOA prevailed must be pleaded in the petition and the petitioner must furnish the facts and particulars to show that the extensive prevalence of the offence has affected the result of the election. The petitioner has failed to do so: *Dr Shafie bin Abu Bakar v Pegawai Pegurus Pilihan Raya N 26 Bangi — Mohd Zakri bin Hj Hussin & Ors and other petitions (No 2)* [2005] 2 MLJ 149.

**[24]** In paragraphs (iv) and (v) of the grounds in his petition, the petitioner complained that the respondent and/or his agents during the polling day within a distance of 50 metres from the limits of any polling station had waited or loitered and or solicited or persuaded or attempted to persuade voters at the polling station to vote for the respondent in breach of s 26(1)(e)(iii) and or (iv) of the EOA.

**[25]** In the Petition, the petitioner did not plead nor rely on s 31(1) of the EOA that the election of the respondent at the election is avoided by his conviction for any corrupt practice or illegal practice at such election. Instead, based on the facts pleaded, the petitioner is relying on s 32(b) and (c) of the EOA. As stated above, the petitioner did not specifically plead s 32(b) of the EOA. He also did not plead that such non-compliance affected the result of the election.

**[26]** Reading paragraphs (iv) and (v) of the grounds in his petition, the petitioner did not allege any corrupt practice by the respondent. Instead, he alleged that pursuant to s 26(1)(e)(iii) and or (iv) and s 32(c) of the EOA that the respondent and or his agents had committed illegal practice in connection with the election by the respondent or by his agent with his knowledge or consent.

**[27]** Again, reading these paragraphs, the pleadings were not clear whether it was the respondent himself and/or his agents had committed the illegal practices. The petitioner did specifically plead or alleged that it was the respondent who had committed the illegal practices under s 26(1)(e)(iii) and or (iv) and s 32(c) of the EOA. If the petitioner alleged that the illegal practices were committed by the respondent's agents, the petitioner did not plead that they were committed with the respondent's knowledge or consent which is required by s 32(c) of the EOA.

**[28]** Further, the petitioner did not identify who were the agents of the respondent who had committed the illegal practices with the knowledge and consent of the respondent at SMJK Tiong Hua Sandakan. The petitioner did not identify who were the voters who were solicited or persuaded by the

respondent or his agents with his knowledge or consent contrary to s 26(1)(e)(iii) of the EOA to vote for the respondent.

**[29]** Although only Chen Kok On was identified, the petitioner did not identify the others who were loitering and whether they were the agents of the respondent and whether they committed the illegal practice with the knowledge and consent of the respondent. The petitioner did not specifically plead that Chen Kok On had committed the illegal practice with the knowledge or consent of the respondent.

**[30]** In the petition under paragraph 'C. Prayers', the petitioner prays further or in the alternative that the BN's candidate, Liew Vui Keong, be declared as being duly elected or returned. This prayer or relief is or should be made pursuant to s 35(c) of the EOA previously but which has been repealed by Act A1177. Therefore this relief cannot be claimed or prayer for.

**[31]** Therefore the petitioner did not comply with the requirements of s 32(a), (b) and or (c) and s 35 of the EOA and with r 4 of the Rules. The petition is defective.

**[32]** For the reasons given, this election petition is hereby struck out and the respondent is duly returned. Costs of RM30,000 to be paid to the respondent.

*Election petition struck out with costs of RM30,000.*

Reported by Afiq Mohamad Noor